

CHAPTER G

REPORTS OF SURVEY

I.	REFERENCES.....	3
II.	INTRODUCTION/PURPOSES OF THE REPORT OF SURVEY SYSTEM	3
III.	ALTERNATIVES TO REPORTS OF SURVEY	4
	A. STATEMENT OF CHARGES/CASH COLLECTION VOUCHER	4
	B. CASH SALES	4
	C. ADJUSTED LOSSES	4
	D. ABANDONMENT ORDER	4
	E. RECOVERY OF PROPERTY	4
	F. AR 15-6 AND OTHER COLLATERAL INVESTIGATIONS.....	4
	G. SHORT SURVEY.....	4
IV.	THE REPORT OF SURVEY SYSTEM	5
	A. INITIATING THE REPORT OF SURVEY.....	5
	B. APPOINTING AUTHORITY	6
	C. APPROVING AUTHORITY	6
	D. SURVEYING OFFICER QUALIFICATIONS	6
V.	VALUING THE LOSS.....	7
	A. TYPES OF LOSS.....	7
	B. INVOLUNTARY WITHHOLDING OF CURRENT PAY.....	9
VI.	IMPOSING LIABILITY.....	10
	A. RESPONSIBILITY FOR PROPERTY	10
	B. NEGLIGENCE	12
	C. PROXIMATE CAUSE	14
VII.	RESPONDENT'S RIGHTS.....	15
	A. GENERAL INFORMATION.....	15

B. RIGHTS	15
VIII. DUTIES OF THE APPROVING AUTHORITY.	16
A. LEGAL REVIEW	16
B. ADVISORY OPINION.	16
IX. RELIEF FROM REPORTS OF SURVEY.	17
A. APPEALS	17
B. REOPENING THE SURVEY	17
C. REMISSION OF INDEBTEDNESS	18
D. ARMY BOARD FOR THE CORRECTION OF MILITARY RECORDS (ABCMR) (AR 15-185).	18
E. CIVILIAN EMPLOYEES ,	18
X. JUDGE ADVOCATE’S ROLE.	19
A. FOR THE APPROVING AUTHORITY.....	19
B. FOR THE APPEAL AUTHORITY	19
C. FOR THE RESPONDENT	19
XI. CONCLUSION.....	19

Outline of Instruction

I. REFERENCES.

- A. AR 735-5, Policies and Procedures for Property Accountability, 31 January 1998.
- B. DA Pam 735-5, Survey Officer's Guide, 1 March 1997.
- C. AR 600-4, Remission of Indebtedness for Enlisted Members, 1 April 1998.
- D. AR 37-1, Army Accounting and Fund Control, 30 Apr 91.
- E. DA Pam 710-5, Unit Commander's Supply Handbook, 15 April 1987.

II. INTRODUCTION/PURPOSES OF THE REPORT OF SURVEY SYSTEM.

- A. Applicability.
 - 1. Active Component.
 - 2. Reserves and National Guard.
 - 3. DA Civilian Employees.
- B. Purposes (AR 735-5, para. 13-1).
 - 1. Documents circumstances of loss, damage or destruction of Government property.

2. Serves as voucher for adjusting property books.
3. Documents charge of or relief from financial liability.

III. ALTERNATIVES TO REPORTS OF SURVEY .

- A. Statement of Charges/Cash Collection Voucher (AR 735-5, para. 12-2) when liability is admitted and the charge does not exceed one month's base pay. (These two functions have been combined in the DD Form 362)
- B. Cash sales of hand tools and organizational clothing and individual equipment (AR 735-5, para. 12-2b).
- C. Unit level commanders may adjust losses of durable hand tools up to \$100 per incident, when no negligence or misconduct is involved (AR 735-5, para. 14-25).
- D. Abandonment order (AR 735-5, para. 14-23) are used in combat, contingency operations, large scale field exercises simulating combat, military advisory activities, or to meet other military requirements.
- E. Recovery of property unlawfully held by civilians? Authorized (AR 735-5, para. 14-11) -- show proof it is U.S. property and **do not** breach the peace.
- F. Use AR 15-6 investigations and other collateral investigations as substitutes for the report of survey investigation (AR 735-5, para. 13-24).
- G. Short Survey (AR 735-5, paras. 13-21 and 13-22). An **approving authority** may find an individual liable or not liable financially for damage to government property based on the evidence available without appointing a survey officer. The approving authority then assumes the survey officer's duties with respect to computing the charges and notifying the respondent.

IV. THE REPORT OF SURVEY SYSTEM (AR 735-5, CH. 13 AND 14).

A. Initiating the Report of Survey.

1. Active Army commanders will initiate the report of survey within 15 calendar days of discovering the loss or damage (USAR guideline is 75 days, ARNG guideline is 45 days). [AR 735-5, para. 13-7].
2. The goal? A thorough investigation.
3. A report of survey or AR 15-6 investigation **MUST** be initiated (AR 735-5, para. 13-2) when:
 - a. An individual refuses to admit liability and negligence or misconduct is suspected.
 - b. A higher authority or other DA regulation directs a report of survey.
 - c. A sensitive item is lost or destroyed.
 - d. Property is lost by an outgoing accountable officer, unless voluntary reimbursement is made for the full value of the loss.
 - e. The amount of loss or damage exceeds an individual's monthly base pay, **even** if liability is admitted.
 - f. Damage to government quarter's or furnishings exceeds one month's base pay.
 - g. The loss involves certain bulk petroleum products.

4. In the Active Army, reports of survey will normally be processed within 75 days (USAR guidelines provide 240 days, ARNG guidelines provide 150 days) [AR 735-5, para. 13-5].

B. Appointing Authority (AR 735-5, para. 13-16).

1. The appointing authority appoints report of survey investigating officers, and reviews all reports of survey initiated within his or her command or authority.
2. Generally, a lieutenant colonel (05) commander is both appointing and approval authority.
3. When approving authority is retained at the colonel (06) level or above, the approving authority may designate a lieutenant colonel (05) (or major in a lieutenant colonel billet) or DOD civilian employee in the grade of GS-13 (or a GS-12 in a GS-13 billet) or above as appointing authority.

C. Approving Authority (AR 735-5, para. 13-16).

1. The approving authority is normally a battalion (05) or brigade (06) commander, but may be any commander, chief of a HQDA staff agency, director of a MACOM staff office, chief of a separate MACOM activity in the grade of O-5 or higher, or a DA civilian employee in a supervisory position in the grade of GS-14 or above.
 - a. Does not have to be a court-martial convening authority.
 - b. Takes final action by authority of the Secretary of the Army.
2. Regardless of who initiates the report of survey, it is processed through the chain of command of the individual responsible for the property at the time of the incident, provided the individual is subject to AR 735-5. (AR 735-5, para. 13-4).

D. Survey Officer Qualifications (AR 735-5, para. 13-26).

1. The survey officer will be senior to the person subject to possible financial liability, “except when impractical due to military exigencies.”
2. The survey officer can be an Army commissioned officer; warrant officer; or enlisted soldier in the rank of Sergeant First Class (E-7), or higher; a civilian employee GS-07 or above; or a Wage Leader (WL) or Wage Supervisor (WS) employee. In joint commands or activities, any DOD commissioned or warrant officer or non-commissioned officer E-7 or above assigned to the activity or command can be the survey officer.
3. Consult AR 600-8-14, table 8-6 for the grade equivalency between military personnel and civilians employees.
4. Survey officer’s primary duty? The investigation.
5. The surveying officer **should** get a briefing from a judge advocate.

V. VALUING THE LOSS.

A. Types of Loss.

1. Loss. There are two types of losses which can result in financial liability:
 - a. Actual loss. Physical loss, damage or destruction of the property.
 - b. Loss of accountability. Due to loss circumstances, it is impossible to determine if there has been actual physical loss, damage, or destruction because it is impossible to account for the property.

2. The **actual value** at the time of the loss is the **preferred method** of valuing the loss. (AR 735-5, App. B, para. B-2a).
 - a. Determine the item's condition item at the time of the loss or damage.
 - b. Determine a price value for similar property in similar condition sold in the commercial market within the last 6 months.
3. Depreciation.
 - a. **Least** preferred method of determining the loss to the government (AR 735-5, App. B, para. B-8).
 - b. Compute charges according to AR 735-5, App. B, para B-2b.
4. Limits on financial liability (AR 735-5, para. 13-39).
 - a. **General rule:** An individual will not be charged more than one month's base pay.
 - (1) Charge is based upon the soldier's base pay **at the time of the loss**.
 - (2) For ARNG and USAR personnel, base pay is the amount they would receive if they were on active duty.
 - (3) For civilian employees it is 1/12 of their annual salary.
 - b. **Exceptions** to the general rule. There are times when personnel are liable for the **full amount of the loss**. (AR 735-5, para. 13-39a)
 - (1) Any soldier is liable for the full loss to the Government (less depreciation) when they lose, damage, or destroy personal arms or equipment.

- (2) Any person is liable for the full loss of public funds.
 - (3) Accountable officers will be liable for the full amount of the loss.
 - (4) Any person assigned government quarters is liable for the full amount of the loss to the quarters, furnishings, or equipment as a result of gross negligence or willful misconduct of the responsible individual, his guests, dependents, or pets.
- 5. Collective Financial Liability: Two or more persons may be held liable for the same loss.
 - (1) There is no comparative negligence.
 - (2) Financial loss is apportioned according to AR 735-5, Table 12-4.
 - (3) DO NOT use Table 12-4 if one of the collective liability respondents is not federally employed (AR 735-5, para. 13-39d).
 - (a) Take the total number of respondents divide the total amount of the loss. This is the amount each respondent is liable for -- subject to a one month's base pay cap for soldiers and civilian employees.

B. Involuntary Withholding of Current Pay.

- 1. Members of the armed forces may have charges involuntarily withheld. 37 U.S.C. § 1007.
- 2. Involuntary withholding for civilian employees. 5 U.S.C. § 5512, AR 37-1, Chapter 15.

3. No involuntary withholding for the loss of NATO property (DAJA-AL 1978/2184).
4. No involuntary withholding for the loss of MFO property.

VI. IMPOSING LIABILITY.

A. Responsibility For Property (AR 735-5, paras. 2-8 & 13-28)

1. Command Responsibility.
 - a. The commander has an obligation to insure proper use, care, custody, and safekeeping of government property within his or her command.
 - b. Command responsibility is inherent in command and cannot be delegated. It is evidenced by assignment to command at any level.
2. Supervisory Responsibility.
 - a. The obligation of a supervisor for the proper use, care, and safekeeping of government property issued to, or used by, subordinates. It is inherent in all supervisory positions and not contingent upon signed receipts or responsibility statements.
 - b. If supervisory responsibility is involved, also consider the following factors.
 - (1) The nature and complexity of the activity and how it affected the ability to maintain close supervision.
 - (2) The adequacy of supervisory measures used to monitor the activity of subordinates.

- (3) The extent supervisory duties were hampered by other duties or the lack of qualified assistants.

3. Direct Responsibility.

- a. The obligation to ensure the proper use, care, custody, and safekeeping of all government property for which the person has receipted.
- b. Direct responsibility is closely related to custodial responsibility (discussed below).

4. Custodial Responsibility.

- a. An individual's obligation regarding property in storage awaiting issue or turn-in to exercise reasonable and prudent actions to properly care for and ensure property custody and safekeeping of the property.
- b. Who has custodial responsibility? A supply sergeant, supply custodian, supply clerk, or warehouse person who is rated by and answerable directly to the accountable officer or the individual having direct responsibility for the property.
- c. Responsibilities include:
 - (1) Ensuring the security of all property stored within the supply room and storage annexes belonging to the supply room or SSA is adequate.
 - (2) Observing subordinates to ensure they properly care for and safeguard property.
 - (3) Enforcing security, safety and accounting requirements.

- (4) If unable to enforce any of these, reporting the problems to their immediate supervisor.

5. Personal Responsibility.

- a. An individual's obligation to properly use, care, and keep safe government property in their possession, with or without a receipt.

B. Negligence (AR 735-5, para. 13-28 b and see App. C, para. C-10).

- 1. Simple negligence -- the failure to act as a reasonably prudent person would have acted under similar circumstances.

- a. Remember, a reasonably prudent person is an average person, not a perfect person. Also consider:

- (1) What could be expected of the person considering their age, experience, and special qualifications.
- (2) The type of responsibility involved.
- (3) The type and nature of the property. More complex or sensitive property normally requires a greater degree of care.

b. Examples of simple negligence.

- (1) Failure to do required maintenance checks.
- (2) Leaving weapon leaning against a tree while attending to other duties.
- (3) Driving too fast for road or weather conditions.

- (4) Failing to maintain proper hand receipts.
- 2. Gross negligence - an extreme departure from the course of action expected of a reasonably prudent person, all circumstances being considered, and accompanied by a reckless, deliberate, or wanton disregard for the foreseeable consequences of the act.
 - a. Reckless, deliberate, or wanton -
 - (1) These elements can be express or implied.
 - (2) Does not include thoughtlessness, inadvertence, or errors in judgment.
 - b. Foreseeable consequences.
 - (1) Does not require actual knowledge of actual results.
 - (2) Does not need to foresee the particular loss or damage that occurs, but must foresee that some loss or damage of a general nature may occur.
 - c. **Examples of gross negligence.**
 - (1) Soldier drives a vehicle at a speed in excess of 40 mph of the posted speed limit. Intentionally tries to make a sharp curve without slowing down.
 - (2) Soldier lives in family quarters and has a child who likes to play with matches. Soldier leaves matches out where child can reach them.
- 3. Willful misconduct - any intentional or unlawful act.
 - a. Willfulness can be express or implied.

b. Includes violations of law and regulations such as theft and misappropriation of government property.

c. A violation of law or regulation is not negligence per se.

d. Examples of willful misconduct.

(1) Soldier throws a tear gas grenade into the mess tent to let the cooks know what he thought about breakfast, and as a result, the tent burns to the ground.

(2) Soldier steals a self-propelled howitzer, but he does not know how to operate it. Accordingly, his joy ride around post results in damage to several buildings.

C. Proximate cause - the cause which, in a natural and continuous sequence, unbroken by a new cause, produces the loss or damage, and without which the loss or damage would not have occurred. It is the primary moving cause, or the predominant cause, from which the injury follows as a natural, direct, and immediate consequence, and without which it would not have occurred.

1. The damage arises out of the original act of negligence or misconduct.

2. A continual flow or occurrence of events from the negligent act or misconduct.

3. Use common sense.

4. Examples of proximate cause.

a. Soldier driving a vehicle fails to stop at a stop sign and strikes another vehicle after failing to look. Proximate cause is the soldier's failure to stop and look.

- b. Soldier A illegally parks his vehicle in a no parking zone. Soldier B backs into A's vehicle. B did not check for obstructions to the rear of his vehicle. A's misconduct is not the proximate cause of the damage. Instead, B's negligent driving is the proximate cause.
- 5. Independent intervening cause - an act which interrupts the original flow of events or consequences of the original negligence. It may include an act of God, criminal misconduct, or negligence.

VII. RIGHTS OF THE RESPONDENT (AR 735-5, PARA. 13-40).

A. General Information.

- 1. Respondent = person recommended for financial liability.
- 2. The report of survey form (DA Form 4697) contains a rights notice.

B. Rights (AR 735-5, paras. 13-32 and 13-40 and figure 13-12).

- 1. An opportunity to examine the report of investigation.
- 2. Submit statements for consideration. Time limits for submitting rebuttal statements (AR 735-5, para. 13-33):
 - a. 7 calendar days -- when survey and investigation are hand delivered to the respondent.
 - b. 15 calendar days -- when respondent is unavailable but in the same country and the survey and investigation are mailed.
 - c. 30 calendar days -- when respondent is unavailable and in a different country and the survey and investigation are mailed.

3. Explanation of the consequences of a finding of gross negligence for a survey involving government quarters, furnishings and equipment.
4. Right to assistance of a JAG officer.
5. Right to request reconsideration.
6. Right to a hearing (for DOD civilians only – hearing is before finance, not commander).

VIII. DUTIES OF THE APPROVING AUTHORITY.

- A. Before the approving authority takes action, the survey is reviewed by a judge advocate as to the adequacy of the evidence and propriety of the findings and recommendations. (AR 735-5, para. 13-36).
- B. The approving authority is not bound by the survey officer's, or judge advocate's recommendations.
 1. If the approving authority decides to assess financial liability contrary to the recommendations of the survey officer or judge advocate the decision and the rationale must be in writing.
 2. If considering new evidence, the approving authority must notify the individual of that fact and provide an opportunity to rebut.
 3. The approving authority must ensure that the individual was advised of rights.
 4. Initiate collection action by sending documentation to the servicing finance office.
 5. The approving authority may request that a charge be prorated beyond 2 months (and up to 12 months).

IX. RELIEF FROM REPORTS OF SURVEY.

A. Appeals (AR 735-5, paras. 13-42, 13-48 & 13-49).

1. **Appeal authority** is the next higher commander above the approving authority (normally the brigade commander).
2. Respondent has 30 days from date of notification to appeal unless he or she shows good cause for extension.
3. Two step process:
 - a. Submit request for reconsideration to approval authority.
 - b. Approving authority forwards to appeal authority as an appeal.
4. If the approving authority denies reconsideration the following actions are required before forwarding to the appeal authority:
 - a. Prepare a memorandum giving the basis for denying the requested relief.
 - b. The approving authority must personally sign the denial.
5. The appeal authority must get an independent legal review before acting on the appeal.
6. Action by the appeal authority is final.

B. Reopening Reports of Survey (AR 735-5, para. 13-46).

1. Not an appeal.
2. Authority to reopen rests with the approval authority.

3. May occur:
 - a. As part of an appeal of the assessment of financial liability.
 - b. When a response is submitted to the surveying officer from the person charged subsequent to the approving authority having assessed liability.
 - c. When a subordinate headquarters recommends reopening based upon new evidence.
 - d. When the property is recovered.
 - e. When the approving authority becomes aware that an injustice has occurred.

C. Remission of Indebtedness (AR 735-5; AR 600-4).

1. Enlisted soldiers only.
2. Only to avoid extreme hardship.
3. Only unpaid portions can be remitted. Suspend collection action long enough for the soldier to submit his request for remission of the debt.
4. Must request reconsideration before submitting request for remission of indebtedness.

D. Army Board for the Correction of Military Records (ABCMR) (AR 15-185).

E. Civilian employees may avail themselves of the grievance/arbitration procedures.

X. JUDGE ADVOCATE’S ROLE.

- A. For the Approving Authority (AR 735-5, para. 13-36).
 - 1. Before approving authority takes action, a judge advocate must review the survey and investigation for legal sufficiency.
 - 2. The approving authority is not bound by the survey officer’s or the judge advocate’s recommendations.
- B. For the Appeal Authority (AR 735-5, para. 13-49b).
 - 1. Before appeal authority takes action on an appeal, a judge advocate must review it.
 - 2. Judge advocate must be different than the one who reviewed the survey and investigation for the approval authority.
- C. For the Respondent (AR 27-3, para. 3-6 g(4)(b)).
 - 1. Legal Assistance office required to provide assistance on rebuttal to report of survey.
 - 2. Civilians not otherwise entitled to legal assistance receive assistance for report of survey purposes.

XI. CONCLUSION.

